

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CACR09-142

JAMES LEE ELKINS,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

**Opinion Delivered**     JUNE 24, 2009

APPEAL FROM THE MILLER  
COUNTY CIRCUIT COURT,  
[NO. CR-07-169-3]

HONORABLE KIRK JOHNSON,  
JUDGE,

AFFIRMED

---

**KAREN R. BAKER, Judge**

Appellant James Elkins asserts the trial court erred in refusing to grant his directed verdict motion as his challenge to this jury conviction of second-degree battery and sentence of thirty-months in the Arkansas Department of Correction. He was charged and convicted under Arkansas Code Annotated section 5-13-202(a)(4)(C) (Repl. 2006), which provides that a person commits second-degree battery if he “knowingly, without legal justification, causes physical injury to a person he or she knows to be...sixty (60) years of age or older[.]” On appeal, he contends that the State failed to produce sufficient evidence of his guilt because he did not know the victim’s age. We find no merit to his argument and affirm.

The standard of review in cases challenging the sufficiency of the evidence is well established. We treat a motion for a directed verdict as a challenge to the sufficiency of the

evidence. *Kelley v. State*, 103 Ark. App. 110, \_\_\_S.W.3d\_\_\_ (2008). This court has repeatedly held that in reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* We defer to the jury's determination on the matter of witness credibility. *Id.* Jurors do not and need not view each fact in isolation, but rather may consider the evidence as a whole. *Id.* The jury is entitled to draw any reasonable inference from circumstantial evidence to the same extent that it can from direct evidence. *Id.*

The jury in this case was entitled to draw the reasonable inference that appellant knew the age of the victim from the facts and circumstances surrounding the attack. Sandra Daniels testified that the victim, Henry Campbell, came to her house to take her to the store on January 23, 2007. As Daniels opened the door to leave, appellant came up and grabbed her by the hair. Appellant pushed her back and she hit the floor. Daniels then ran out of her house and called the police from a neighbor's home. While Daniels was at the neighbor's house, Campbell was sitting in his car when appellant approached him and started to hit him. Campbell and appellant knew each other prior to the attack as they had spoken before and watched a football game together.

Dr. Robert Fry, who treated Campbell at the emergency room after the attack, testified

that Campbell's medical records indicated that he was seventy-seven years old. Dr. Fry stated that Campbell appeared to be over the age of sixty. Campbell testified that he was born on April 4, 1929, making him seventy-seven years old at the time of the attack. Campbell stated that he may have told appellant his age, adding that he is "not ashamed of" his age and that he tells everyone his age.

Appellant argues that the State did not introduce any evidence indicating that he knew Campbell's age. In denying his directed verdict motion, the trial court stated that whether or not appellant knew the victim's age "is a fact question for the jury to determine based on their observations of him and the other testimony." The fact-determination in this case is similar to that in *LaFort v. State*, 98 Ark. App. 202, 254 S.W.3d 27 (2007). There, the victim was eighty-two years old and had been LaFort's mother-in-law for twenty years. Rather than simply relying on the fact of the relationship, however, this court specifically held that the victim's appearance in LaFort as an elderly woman was sufficient to give LaFort notice that the victim was sixty years old. Specifically, we stated, "[w]hile there is sufficient evidence to show that appellant was aware of [the victim's] actual age, a reasonable inference can be made that appellant knew that [the victim] was over sixty years of age."

In this case, the jury observed Campbell, the victim in this case, when he testified and examined photographs of him that were introduced into evidence. The jury also observed appellant during the trial. At the time of the attack, appellant was less than six months away from his sixtieth birthday. Based on Campbell's appearance and appellant's association with

Campbell prior to the attack, the jury could reasonably infer that appellant knew that Campbell was over sixty years of age, particularly since the victim was seventeen years older than appellant and appellant was almost sixty years of age. Accordingly, we affirm.

Affirmed.

KINARD and HENRY, JJ., agree.